THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.15360 OF 1996

DATED: 06-02-2007

Between:

M/s Blue Star Limited, 2-2-47, 47/1108, Bolaram Raod, Secunderabad represented by its Branch Manager Mr. G.V.S. Anand Kumar

.. Petitioner

and

The Hon'ble Industrial Tribunal-I, Chandra Vihar, M.J. Road, Hyderabad represented by its Chairman and another

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.15360 OF 1996

ORDER:

This writ petition is filed by the Management of M/s Blue Star Limited, Secunderabad seeking a certiorari to call for the records pertaining to the order made in M.P.No.109 of 1990 in I.D.No.2 of 1990 dated 29.06.1996 on the file of the Industrial Tribunal No.1, Hyderabad and to set aside the same.

It appears, I.D.No.2 of 1990, a dispute raised by the Union regarding the wages payable to its members, was pending on the file of the 1st respondent. During the pendency of the said Industrial Dispute, the 2nd respondent herein (workman) was sought to be removed from the service of the Company and, therefore, M.P.No.109 of 1990 was filed by the petitioner-Management under Section 33 (2) (b) of Industrial Disputes Act, 1947 (for short 'the Act') seeking approval of its action in dismissing the 2nd respondent-workman. The 2nd respondent herein filed a detailed-counter affidavit in the said matter. On behalf of the petitioner-Management, PWs-1 to 4 were examined and Exs-P1 to P68 were marked and, on behalf of the 2nd respondent-workman, he himself was examined as RW-1 and Exs-R1 to R24 were marked. After a detailed consideration of the evidence on record, both oral and documentary, the Tribunal came to the conclusion that no approval can be

accorded for imposing the punishment of dismissal from service on the workman and, therefore, rejected the application. Aggrieved by the same, the present writ petition is filed by the Management.

The learned counsel for the petitioner, Sri P. Nageswara Sree, strenuously contended that the Tribunal framed the following three points for consideration:

1. Whether the petitioner-Management is entitled for approval of its action in dismissing the respondent-workman from service w.e.f. 28.09.1990?

2. Whether the disciplinary action initiated against the respondent-workman is not maintainable for the reasons firstly that it contravened the provisions of Settlement Deed dated 15.11.1985, secondly it amounts to unfair labour practice and thirdly it has been initiated by an incompetent person?

3. Whether the order of dismissal passed against the respondent-workman is not valid for want of competency on the part of the person who passed that order?

According to the learned counsel for the petitioner, point No.2 was neither pleaded by the respondent nor any evidence was let-in in that regard. Therefore, framing and deciding the said point No.2, without there being any pleading and specific evidence, is arbitrary and illegal. Therefore, on this ground alone, the order passed by the Tribunal is liable to be set aside. Insofar as point No.1 is concerned, the petitioner-Management is entitled for approval of its action in dismissing the respondent-

workman. Apart from that, the finding of the Tribunal that the person who passed the dismissal order was not competent, is also not correct.

On the other hand, the learned counsel for the 2nd respondent, Sri Ravindra Reddy, contended that assuming that the person who dismissed the respondent-workman from service has power, insofar as point No.2 is concerned, the settlement dated 15.11.1985 under Section 12 (3) of the Industrial Disputes Act is not in dispute. Further, in the evidence of the respondent, it was categorically asserted that no notice of any kind was issued nor meeting of any kind was called for as required under the settlement dated 15.11.1985 and in view of the same also, the dismissal order passed by the petitioner is bad in law. Therefore, the Industrial Tribunal has rightly come to the conclusion that this is not a fit case where approval can be granted under Section 33 (2) (b) of the Act. No interference can be made by this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and also perused the order passed by the Industrial Tribunal and other material available on record.

It is the petitioner-Management, which went before the Tribunal seeking approval of its action in dismissing the 2nd respondent herein from service under Section 33 (2) (b) of the Act. In fact, in support of its contention, it should have asserted that in accordance with the settlement dated 15.11.1985 under Section 12 (3) of the Act, meeting of the

Union was called for and the Union did not participate in the said meeting. Since such a pleading was not there, the Management cannot blame the 2nd respondent-workman saying that in his counter, he has not asserted that in spite of there being a settlement under Section 12 (3) of the Act, the meeting was not called for and he could not participate in any such meeting, therefore, the order of dismissal cannot be given approval by the Tribunal. In this case, though it was not asserted by the Management, either in its pleadings or in the evidence, in the evidence adduced on behalf of the workman, it was asserted that in spite of there being a settlement under Section 12 (3) of Act dated 15.11.1985 requiring a meeting of the Union for the purpose of discussion as to taking such an action against the respondent-workman, the said meeting was not conducted. However, when a suggestion was made to RW-1 in his cross-examination, he denied the said suggestion as *"It is not true to suggest that in spite of the Management called for meeting, the Union refused to participate in the meeting."*

In spite of this and though opportunity was available, the Management did not place any such record showing that meeting was conducted as required under the settlement dated 15.11.1985. Nothing prevented the Management from placing such document before the Tribunal by examining any of the witnesses, if necessary, if really such a meeting was called for by the Management. No such evidence was placed except making a vague suggestion to RW-1. Therefore, the contention of the learned counsel for the petitioner that the Industrial Tribunal has decided the matter without there being a pleading and evidence to that

effect and that the Tribunal ought not to have framed such a point and decide it on the basis of the evidence available on record, does not merit acceptance. The general rules of evidence are not applicable to the industrial litigation before the Labour Court. In this case, the existence of 12 (3) settlement is not in dispute. Further, having made a suggestion to RW-1 in the cross-examination, the Management failed to produce any such document to show that they have called for a meeting as required under the settlement dated 15.11.1985.

For all the above reasons, the writ petition is devoid of merits and is liable to be dismissed.

The writ petition is accordingly dismissed. No costs.

C.V. RAMULU, J

6th February, 2007.
IBL